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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Angela Bennett;

Plaintiff,

vs.

The Breadfruit Restaurants, LLC, an
Arizona company; Dwayne Allen and
Danielle Leoni, husband and wife

Case No.: _____

COMPLAINT

JURY DEMAND

Plaintiff Angela Bennett, for her Complaint against Defendants, alleges as follows:

NATURE OF THE CASE

1. The Fair Labor Standards Act is designed to eliminate “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers.” 29 U.S.C. § 202(a). To achieve its goals, the FLSA sets minimum wage and overtime pay requirements for covered employers. *See* 29 U.S.C. §§ 206(a), 207(a).

2. Employers must compensate employees for all work that employers permit

PARTIES

8. At all times material hereto, Plaintiff was a resident of Maricopa County, Arizona.

9. At all times material hereto, The Breadfruit Restaurants, LLC (“The Breadfruit Restaurants”), was incorporated in the State of Arizona.

10. Upon information and belief, at all times material hereto, Defendant Dwayne Allen was and continues to be a resident of Arizona.

11. Danielle Leoni is Dwayne Allen’s wife. Dwayne Allen and Danielle Leoni have caused events to take place giving rise to this Complaint as to which their marital community is fully liable.

12. Upon information and belief, and consistent with the information available from the Arizona Secretary of State, Defendants Dwayne Allen and Danielle Leoni were and are the owner of The Breadfruit Restaurants, LLC.

13. At all relevant times, Plaintiff was an “employee” of Defendants, as defined by 29 U.S.C. § 203(e)(1).

14. The provisions set forth in 29 U.S.C. § 207 of the FLSA apply to Defendants.

15. At all relevant times, each of the Defendants was and continues to be an “employer” as defined in 29 U.S.C. § 203(d).

16. Each of the Defendants should be deemed an “employer” for purposes of the FLSA including, without limitation, 29 U.S.C. § 216.

17. All Defendants are co-equally liable for all matters.

1 18. On information and belief, Defendants Dwayne Allen and Danielle Leoni
2 made all decisions on the daily activities of their employees and make all decisions
3 regarding pay policies and exerted financial and operative control over The Breadfruit
4 Restaurants, LLC and are therefore individually liable under the FLSA.

5 19. On information and belief, Defendants Dwayne Allen and Danielle Leoni had
6 the power to close The Breadfruit Restaurants, LLC

7 20. On information and belief, Defendants Dwayne Allen and Danielle Leoni had
8 the power to hire and fire employees.

9 21. On information and belief, Defendants Dwayne Allen and Danielle Leoni
10 hired managerial employees.

11 22. On information and belief, Defendants Dwayne Allen and Danielle Leoni
12 maintained employment records.

13 23. Defendants Dwayne Allen and Danielle Leoni profited from the FLSA
14 violations detailed in this complaint.

15 24. At all times material to this action, each of the Defendants was and continues
16 to be an “enterprise engaged in commerce or in the production of goods for commerce”
17 as defined by 29 U.S.C. § 203(s)(1).
18

19 25. On information and belief, at all relevant times, the annual gross revenue of
20 Defendants exceeded, and continues to exceed, \$500,000.00.
21

22 **FACTUAL BACKGROUND**

23 26. The Breadfruit Restaurants hired Plaintiff in March of 2013 to work in
24 Defendants’ restaurant in Phoenix, The Breadfruit and Rum Bar.
25

1 27. Plaintiff was hired to work in the kitchen. Her responsibilities included
2 cooking and prepping food, opening and closing the restaurant, organizing the kitchen,
3 and cleaning the kitchen.

4 28. The Breadfruit Restaurants compensated Plaintiff at an hourly rate of \$10 per
5 hour, during her tenure she received raises and by the end of her employ she was earning
6 \$10.25 per hour.

7 29. Plaintiff was a non-exempt employee.

8 30. Plaintiff had no supervision or management responsibilities.

9 31. Plaintiff could neither hire nor fire employees.

10 32. Plaintiff had no authority to exercise significant independent judgment on
11 issues that affect the whole company when carrying out her job responsibilities.
12

13 33. Defendants managed, supervised, and directed all aspects of Plaintiff's job
14 duties and responsibilities.

15 34. Plaintiff's primary duty was not the performance of work directly related to
16 the management or general business operations of The Breadfruit Restaurants or its'
17 customers.

18 35. Plaintiff's primary duty was not the performance of work requiring advanced
19 knowledge in a field of science or learning that was acquired by a prolonged course of
20 specialized intellectual instruction.

21 36. Plaintiff did not perform work requiring advanced knowledge.
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1 37. During this period, Plaintiff routinely worked forty-one (41) to sixty (60)
2 hours per week for The Breadfruit Restaurants without receiving overtime compensation
3 at time and one half her regular hourly rate.

4 38. During her tenure with Defendants, Plaintiff had an issue with her teeth that
5 required surgery.

6 39. Defendants offered to advance to Plaintiff the amount of money the surgery
7 would require, which was \$3,034.

8 40. The parties reached an agreement in which Defendants would deduct \$100
9 from each of Plaintiffs' paychecks until the \$3,034 was paid back in full.

10 41. However, Defendants began deducting more than \$100 per pay check.
11 Defendants began deducting 10-30 hours of pay each pay period.

12 42. Defendants deducted these hours at Plaintiff's regular rate of pay, even if
13 many of those hours were hours Plaintiff worked above 40 in a workweek.

14 43. For example for the week of 3/23/2014-3/29/2014, Plaintiff worked 51.79
15 hours and was given credit for \$530.85, which is \$10.25 per hour. She was not
16 compensated at time and one half for the 11.79 hours of overtime she worked during that
17 week.

18 44. As further example, for the week of 12/29/2013-1/4/2014, Plaintiff worked
19 60.99 hours and was given credit for \$625.15, which is \$10.25 per hour. She was not
20 compensated at time and one half for the 20.99 hours of overtime she worked during that
21 week.

1 54. As the direct and proximate result of Defendants' violations of the FLSA,
2 Plaintiff has suffered damages by failing to receive compensation in accordance with 29
3 U.S.C. § 207.

4 55. Pursuant to 29 U.S.C. § 216, Defendants are liable to Plaintiff for an amount
5 equal to one and one-half times her regular pay rate for each hour of overtime worked per
6 week.

7 56. In addition to the amount of unpaid wages owed to Plaintiff, he is also
8 entitled to recover an additional equal amount as liquidated damages pursuant to 29
9 U.S.C. § 216(b).

10 57. On information and belief, Defendants' conduct in failing to properly
11 compensate Plaintiff, in violation of the FLSA, was willful.

12 58. Defendants have not made a good faith effort to comply with the FLSA.
13 Plaintiff has been required to bring this action to recover his overtime compensation, and
14 his statutory liquidated damages, and as the direct and foreseeable result of Defendants'
15 conduct, Plaintiff has incurred costs and attorneys' fees.

16 WHEREFORE, Plaintiff respectfully requests that judgment be entered in her
17 favor against Defendants:
18

- 19 a. Awarding Plaintiff overtime compensation in the amount due for all of
20 her time worked in excess of forty (40) hours per week at a pay rate
21 equal to one and one-half times Plaintiff's regular rate of pay while at
22 work for Defendants, in an amount proved at trial;
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- 1 b. Awarding Plaintiff liquidated damages in an amount equal to the
2 overtime award;
- 3 c. Awarding Plaintiff reasonable attorneys' fees, costs, and expenses of the
4 litigation pursuant to 29 U.S.C. § 216(b);
- 5 d. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all
6 amounts awarded under subsections (a) and (b) above from the date of
7 the payment due for that pay period until paid in full;
- 8 e. Awarding Plaintiff post-judgment interest, at the highest legal rate, on
9 all awards from the date of such award until paid in full; and
- 10 f. For such other and further relief as the Court deems just and proper.

11
12 **COUNT TWO**
13 **DECLARATORY JUDGMENT**

14 59. Plaintiff incorporates and adopts paragraphs 1 through 58 above as if fully set
15 forth herein.

16 60. Plaintiff and Defendants have an overtime compensation dispute pending.

17 61. The Court has jurisdiction to hear Plaintiff's request for declaratory relief
18 pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

19 62. Plaintiff is entitled to declarations, and requests that the Court make
20 declarations as to the following matters and as to other matters deemed appropriate by the
21 Court:

- 22 a. Defendants employed Plaintiff.
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- b. Defendants are engaged in an enterprise covered by the overtime provisions of the FLSA.
- c. Plaintiff individually is covered by the overtime provisions of the FLSA.
- d. Plaintiff was not an exempt employee pursuant to the FLSA.
- e. Defendants failed and refused to make payments of overtime compensation to Plaintiff, in violation of the provisions of the FLSA.
- f. Defendants' failures to pay overtime compensation to Plaintiff were willful.
- g. Plaintiff is entitled to damages in the amount of overtime compensation not paid by Defendants at the rate of one and one-half times Plaintiff's regular rate of pay.
- h. Plaintiff is entitled to an equal amount as liquidated damages.
- i. Plaintiff is entitled to recover her costs and a reasonable attorney's fee incurred in prosecuting her claim.

63. It is in the public interest to have these declarations of rights recorded as Plaintiff's declaratory judgment action serves the useful purposes of clarifying and settling the legal relations at issue, preventing future harm, and promoting the remedial purposes of the FLSA.

64. The declaratory judgment action further terminates and affords relief from uncertainty, insecurity, and controversy giving rise to the proceeding.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in her favor against Defendants:

- a. Declaring, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, that the acts and practices complained of herein are in violation of the overtime and wage provisions of the FLSA;
- b. Awarding Plaintiff her reasonable attorney’s fees and the costs and expenses of the litigation pursuant to the FLSA; and
- c. For such other and further relief as the Court deems just and proper

DEMAND FOR JURY TRIAL

Plaintiff and all similarly situated employees hereby request that, upon trial of this action, all issues be submitted to and determined by a jury except those issues expressly reserved by law for determination by the Court.

Dated: May 6, 2015

Respectfully submitted,

**PHILLIPS DAYES NATIONAL EMPLOYMENT LAW
FIRM PC**

By: /s/ Trey Dayes
Trey Dayes
Attorney for Plaintiff